

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

2005 OCT -4 PM 2:49

S. McCarra
DEPUTY CLERK

ERNEST HOWARD, SR.,

Petitioner

vs.

5:05-CV-91

HUGH SMITH,

Respondent

ORDER

Before the Court is Petitioner's application for a certificate of appealability ("COA") (doc 70). Petitioner seeks to appeal from the Order of September 1, 2005 (doc 63), which adopted the Magistrate Judge's Recommendation (doc 54) to grant Respondent's Motion to Dismiss the 28 U.S.C. § 2254 petition. Under 28 U.S.C. 2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

For the reasons stated in the Magistrate Judge's Recommendation and the aforesaid Order accepting the same, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right by demonstrating that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322 (2003), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the application for a COA is **DENIED.**